



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158852

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 02, 2014, at Racine, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied the Petitioner's request for a CT scan.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On April 9, 2014, Petitioner's physician, [REDACTED] requested authorization of a Lumbar Spine MRI without contrast material, to be performed at Wheaton Franciscan Health Care – All Saints. (Exhibit 3, attachment 2)
3. On April 9, 2014, MedSolutions, a private consulting company approved, on behalf of DHS, an MRI Lumbar Spine (spinal canal and contents) without contrast. (Id.)
4. On May 22, 2014, [REDACTED] requested, on behalf of the Petitioner, a CT scan of the Lumbar Spine – without contrast material. (Exhibit 3, attachment 1)
5. In his request, [REDACTED] indicated that the Petitioner was evaluated for low back pain on March 4, 2014 with follow-up on May 22, 2014. [REDACTED] further indicated that the Petitioner's symptoms had not improved despite "provider directed conservative treatment or observation." (Exhibit 3, attachment 1)
6. MedSolutions denied the request on June 2, 2014, because, "the clinical information provided does not describe the results of a recent (within 60-days) history and physical examination, clinical evaluation or other meaningful contact (telephone call, electronic mail or messaging) and appropriate laboratory studies and/or x-rays relevant to a spine problem or to the specific level requested." (Exhibit 3, attachment 1)
7. On June 2, 2014, DHS sent the petitioner a notice indicating that it was denying his request for a CT scan of his lumbar spine, without contrast. (Exhibit 1)
8. There was an attempted peer-to-peer review on June 12, 2014, but [REDACTED] was not available. (Exhibit 3, attachment 1)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 7, 2014. (Exhibit 1)
10. Petitioner has had back surgery in 1981 and 1991, but still suffers from back pain. (Testimony of Petitioner)
11. Petitioner had surgical complications and underwent a myelogram to replace a screw in his back. (Testimony of Petitioner)
12. Petitioner has had no other x-rays, but has undergone MRI's. Petitioner estimated the most recent MRI took place six months ago. (Testimony of Petitioner)
13. Two years ago, approximately 2012, the Petitioner was in a car accident, which might have caused trauma to his spine. (Testimony of Petitioner)

DISCUSSION

Physician-prescribed diagnostic services can be covered by Medicaid/BadgerCare, if they are consistent with good medical practice. Wis. Admin Code §§DHS 107.06(1) and 107.25. DHS has now decided to make payment of CT, MRI, and PET scans subject to prior authorization, in an effort to determine if the desires use of the CT, MRI or PET scan is consistent with good medical practice. This prior authorization requirement was announced to providers in an *MA Update*, #2010-92, issued to all providers in October, 2010. The triage of coverage is performed by DHS's agent, MedSolutions, as described in the written policy:

MedSolutions utilizes evidence-based clinical guidelines derived from national medical associations' recommendations to determine the medical necessity and appropriateness of the requested service(s). The guidelines are published on the MedSolutions Portal. MedSolutions will make a PA determination based on current ForwardHealth policy in

conjunction with the MedSolutions guidelines. Providers are reminded that an approved PA does not guarantee reimbursement for the service.

ForwardHealth Update #2010-92, at p. 3 (October, 2010). See also topic 10678 in the on-line provider handbook found at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks>

The Spine Imaging Guidelines used by MedSolutions can be found on their website at:

<http://www.medsolutions.com/documents/guidelines>

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Adm. Code § HFS 107.17(2)(b).

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code § DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

In its letter, DHS indicates that it was appropriate to deny the request for the CT Scan, because the Petitioner had been approved for an MRI a month before the request for a CT Scan was submitted. In his prior authorization request for the CT scan, Petitioner's physician did not explain why the results of the MRI were inadequate to diagnose and treat the Petitioner. In the absence of that information, DHS determined the request for a CT scan to be duplicative of the request for MRI.

Petitioner's history is indeed a complicated one and his desire to have the CT Scan done to determine the cause of his back pain is understandable. However, there isn't sufficient medical documentation in the record to explain why the MRI that was approved in April 2014, was not adequate. Because it appears that the May 2014 request for a CT scan was duplicative of the April 2014 request for the MRI, DHS was correct in its determination that the CT scan was not medically necessary, as defined by Wis. Adm. Code. §DHS 101.03(96m)

The Petitioner should note, however, that his physician can still request a peer-to-peer review with MedSolutions to better explain Petitioner's case, and to see if the request for a CT scan can be approved.

Further, if Petitioner's condition has not improved, his physician can submit a new prior authorization request for the CT scan.

CONCLUSIONS OF LAW

DHS correctly denied the Petitioner's request for a CT scan.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

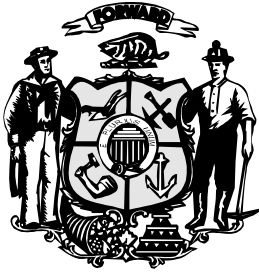
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 16, 2014.

Division of Health Care Access and Accountability